

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:15-cr-117 (1)

CHIEF JUDGE EDMUND A. SARGUS, JR.

v.

SOPHIA M. CAPETILLO,

Defendant.

OPINION AND ORDER

This matter is before the Court on Defendant Sophia M. Capetillo's Motion for Sentence Reduction [ECF No. 66]. On January 22, 2016, after pleading guilty to one count of conspiracy to possess with intent to distribute cocaine, Defendant was sentenced to 20 months of incarceration and 3 years of supervised release. (J. in a Crim. Case at 1–3 [ECF No. 59].)

Defendant seeks a reduction in her sentence under Amendment 794 to the United States Sentencing Guidelines ("U.S.S.G."). Section 3B1.2 of the U.S.S.G. allows a court to reduce the offense level of a defendant who was a "minimal" or "minor" participant in the offense of conviction. Amendment 794, which went into effect on November 1, 2015, altered § 3B1.2's application notes to provide additional guidance to sentencing courts in determining whether a § 3B1.2 mitigating role adjustment should apply. *See United States v. Moore*, No. 3:06-cr-012, 2017 WL 213042, at *1 (E.D. Tenn. Jan. 18, 2017).

Once a sentence has been imposed, 18 U.S.C. § 3582(c) generally prohibits a district court from modifying the sentence. A district court may only modify a final sentence (1) upon motion by the Director of the Federal Bureau of Prisons; (2) where the defendant's sentencing range has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. §


994(o) and a reduction is consistent with applicable policy statements issued by the Commission; or (3) to the extent expressly permitted by statute or by Federal Rule of Criminal Procedure 35. *See* 18 U.S.C. § 3582(c).

None of the exceptions listed in § 3582(c) are applicable here. Defendant implies that the Sentencing Commission subsequently lowered her sentencing range through Amendment 794. She is mistaken. Amendment 794 went into effect nearly three months *before* Defendant was sentenced. And even if Amendment 794 had subsequently lowered her sentencing range, the amendment would not benefit Defendant given that the Commission's relevant policy statement, U.S.S.G. § 1B1.10, does not list Amendment 794 as an amendment that can be applied retroactively. *See, e.g., Moore*, 2017 WL 213042, at *1–2 (concluding that a motion for sentence reduction under Amendment 794 was not “consistent with applicable policy statements issued by the Sentencing Commission” and that § 3582(c) therefore prohibited the court from granting a sentence reduction under Amendment 794 (quoting 18 U.S.C. § 3582(c)(2)); *Johnson v. United States*, Nos. 2:16-cv-528, 2:10-cr-185, 2016 WL 6084018, at *2 (S.D. Ohio Oct. 17, 2016) (holding that Amendment 794 is not retroactively applicable on collateral review); *Aguas-Landaverde v. United States*, Nos. 2:16-cv-00854, 2:15-cr-00183(2), 2016 WL 5341799, at *2 (S.D. Ohio Sept. 23, 2016) (same).

Because the Court cannot grant a sentence reduction under Amendment 794, Defendant's Motion [ECF No. 66] is **DENIED**.

IT IS SO ORDERED.

10-11-2017
DATE



EDMUND A. SARGUS, JR.
CHIEF UNITED STATES DISTRICT JUDGE